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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. _____

PETER BRIDGE,

Petitioner,

vs.

STATE OF NEW JERSEY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

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The petitioner, Peter Bridge, prays that a writ of certiorari issue to review the opinion and judgment of the Superior Court of New Jersey, Appellate Division, rendered in these proceedings on September 12, 1972, certification having been denied by the Supreme Court of New Jersey on September 26, 1972.

Opinions Below

The Opinion of the Superior Court of New Jersey, Appellate Division, appears at Appendix A, *infra,* pp. 1-9

and is reported: *In re Bridge,* 120 N. J. Super. 460, 295 A. 2d 3 (App. Div.) *Cert. denied,* —— N. J. ——, —— A. 2d —— (1972). The trial court rendered an oral opinion the transcript of which appears at Appendix J, pp. 52-59. The Supreme Court of New Jersey refused to grant certification after hearing argument but without opinion.

Jurisdiction

The Judgment of the Superior Court of New Jersey, Appellate Division, was entered September 12, 1972. *See,* Appendix A, p. 9, *infra.* The Supreme Court of New Jersey denied certification on September 26, 1972. *See,* Appendix B, p. 10, *infra.* This petition was filed within 90 days of the date of the denial of certification by the Supreme Court of New Jersey. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

Question Presented

Whether the State must show a minimum of compelling need, relevance and materiality before a newspaper reporter is obliged to testify about statements given to him by a public official concerning corruption in city government where a grand jury with respect to public officials has the right to return a report critical of public officials if it cannot indict?

Constitutional Provisions, Statutes and Rules Involved

Constitution of the United States:

Amendment I:

Congress shall pass no law . . . abridging the freedom of speech . . .

Amendment XIV:

. . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of its laws.

N.J.S. 2A:84A-21:

Subject to Rule 37, a person engaged on, connected with, or employed by, a newspaper has a privilege to refuse to disclose the source, author, means, agency or person from or through whom any information published in such newspaper was procured, obtained, supplied, furnished, or delivered.

New Jersey Court Rules, 1969, R. 3:6-9(a):

A presentment may be made only upon the concurrence of 12 or more jurors. It may refer to public affairs or conditions, but it may censure a public official only where his association with the deprecated public affairs or conditions is intimately and inescapably a part of them.

Statement of Facts

This case concerns the jailing for 20 days of a newspaper reporter who asserted a First Amendment privilege

on behalf of the public to refuse to divulge to a grand jury unpublished information received by the reporter from a public official who had made allegations of corruption in government. The reporter refused to cooperate with the grand jury whose ultimate achievement was a report (not an indictment) which excoriated the official, the reporter, and others for raising the hue and cry of corruption in government.

Law enforcement in Newark, New Jersey, has received much criticism for non-action against organized crime. *See, In re Presentment of Essex Co. Grand Jury*, 46 N. J. 467, 217 A. 2d 874 (1966). Towards the end of Mayor Hugh Addonizio's last term, the Essex County Grand Jury returned a report charging that the Mayor by statements was minimizing the extent of illegal gambling in Newark. *In re Essex County Grand Jury*, 110 N. J. Super. 24, 264 A. 2d 253 (App. Div. 1970). Although that Essex County Grand Jury found no criminal wrongs and issued only a report, there soon followed a federal indictment which led to Mayor Addonizio's conviction.

Mayor Addonizio was succeeded by the present Mayor, Kenneth Gibson. Mayor Gibson had been mayor only a short while when he stated publicly that unlawful attempts were being made to influence him in his appointment of the police director. Apparently, these charges were not supported by sufficient evidence as no indictments or arrests were forthcoming. Much has been made of this charge by the Mayor's political opponents. They charge him with making allegations of corruption whenever he doesn't get his way. (Newspaper story, Appendix I, p. 50). Now comes a charge of corruption from Pearl Beatty, a Newark Housing Authority Commissioner, an appointee and ally of Mayor Gibson.

On May 2, 1972, Peter Bridge, a newspaper reporter, wrote an article in the now defunct (Newark) Evening News, a highly respected New Jersey newspaper, in which he quoted Housing Commissioner Beatty as saying: ". . . a man walked into my office and offered me $10,000 if I would vote for 'their choice' for Executive Director." (Appendix I, p. 48).

After that story appeared, a special grand jury was convened at the request of the Prosecutor of Essex County, supposedly to investigate alleged wrongdoing surrounding the Newark Housing Authority.[1] Peter Bridge was apparently the last of 51 witnesses called by the Grand Jury. (*See,* Presentment, Appendix G, p. 17). After an unsuccessful motion to quash the Grand Jury subpoena on alleged First Amendment rights and alleged statutory rights under the New Jersey newsman shield law, N.J.S. 2A:84A-21, and after an unsuccessful interlocutory appeal to the Superior Court of New Jersey, Appellate Division, Bridge went before the Grand Jury. He confirmed that quotes attributed to Commissioner Beatty were made by Commissioner Beatty to him. He refused to answer questions which sought to elicit whether he received any other information from Mrs. Beatty which he had not published.

An order to show cause why Bridge should not be held in contempt was drawn. At the contempt, trial counsel for Bridge argued that the First Amendment gave Bridge a privilege on behalf of the public to withhold the information sought by the Grand Jury and that since Bridge neither refused to go before the Grand Jury nor had he

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[1] Most all allegations had made known to the Essex County Prosecutor prior to news stories appearing about alleged wrongdoing. It was only after publication that a presentation was made to a grand jury. (*See,* Presentment, Appendix G, p. 19).

witnessed a crime, the decision of *Branzburg* v. *Hayes*, 408 U. S. 665 (1972) was not applicable. More importantly, argument was made that statements given by a public official to a newsman must receive special protection by the First Amendment lest the State be given an effective tool to silence public officials who attempt to alert the public to corruption in government.[2]

The trial court ruled that the *Branzburg* decision eliminated the First Amendment issue from the case and that the New Jersey shield law had been waived by publicizing the name of the informant. It should be noted that *Branzburg* was decided subsequent to petitioner's refusal to answer questions before the Grand Jury but only about a week before his contempt trial. The trial judge ruled that Bridge would have to answer five questions within

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[2] The specific issue with respect to information received from public officials was raised in the trial court during argument: "Mr. Gilhooly: . . . the Branzburg opinion may now apply to situations where people in government come forward and make revelation to the press that something's going wrong. . . . [Now] the government has a very handy way of shutting up the press . . . All this information is now subject to inquiry." (Transcript., p. 28). The argument was more fully articulated in the Appellant's Brief on Appeal from the Trial Court. At p. 14 of the Appellant's Brief, appellant argued:

> The Bridge case represents a crucial point in constitutional history. The court must decide whether or not a government may protect itself against the people in derrogation of the First Amendment of the United States Constitution. If the court sustains the conviction of Peter Bridge, that is exactly the result. Peter Bridge reported statements received from a public official. If a reporter can be required to testify before a grand jury at the mere request of the prosecutor and if inquiry may be made into unpublished information received from that official, then the government shall have an effective tool to prevent its wrong doings from being brought to the attention of the public.

the context of any interview he may have ever had with Mrs. Beatty (Trial court opinion, Appendix J, pp. 54-59).

Bridge renewed these arguments on his appeals in the State courts. While the contempt appeal was pending in the Superior Court of New Jersey, Appellate Division, the only court to which Bridge had an appeal of right, an informant advised counsel for Bridge that the prosecutor had a proposed Grand Jury report which the Grand Jury was prepared to issue and that the report was critical of public officials for giving information to the news media (Appendix H, pp. 44-46).

Counsel for Bridge made a motion to compel the prosecutor to admit or deny the existence of such a proposed presentment (Appendix H, p. 43).

The Superior Court of New Jersey, Appellate Division, denied the motion at oral argument on August 21, 1972 without a written order and on September 12, 1972 rendered an opinion affirming the trial court, specifically finding that based on *Branzburg* v. *Hayes, supra,* Bridge had no First Amendment right to withhold his information (Appendix A, pp. 6-8).

On September 25, 1972, the Supreme Court of New Jersey heard argument on why certification should be granted and also heard argument on the merits. On September 26, 1972, the Supreme Court of New Jersey denied certification without an opinion (Appendix B, p. 10). On September 27, 1972, the Supreme Court of New Jersey stayed the sentence of contempt until October 3, 1972 to allow this Court to act on a motion for stay pending *certiorari* (Appendix D, p. 12). On September 29, 1972, Mr. Justice William J. Brennan, Jr. denied an application for stay (Appendix E, p. 13). The application was renewed to Mr. Justice William O. Douglas who referred it to the full court. On October 3, 1972, the Court denied the stay ap-

plication, Mr. Justice Douglas voting for the stay (Appendix F, p. 14). On October 4, 1972, Peter Bridge was committed to jail.

On October 13, 1972, just as feared by Bridge, the Grand Jury issued a report with possible political overtones condemning the Mayor of Newark, Pearl Beatty, and others for making statements to the press about crime in city government (Presentment, Appendix G, pp. 17-42).

The report also criticized a Newark City employee, Ira Jackson, for merely coming to the prosecutor and relating to the prosecutor that he had heard of wrongdoing in the City government (Presentment, Appendix G, pp. 17-42). The presentment was critical of Bridge for refusing to answer certain questions and for failing to have a pen or pencil in hand when he interviewed Commissioner Beatty (Presentment, Appendix G, pp. 28-31).

Bridge was finally released from jail when the court released the report to the public on October 24, 1972.

Reasons for Granting the Writ

The Bridge case involves an issue far more serious than the issues presented in *Branzburg* v. *Hayes*, 408 U. S. 665 (1972). Should a prosecutor be allowed the unrestricted use of a reporter's testimony to criticize a public official by way of grand jury report.

Branzburg v. *Hayes, supra,* given its broadest interpretation, seemingly holds that the prosecution of crimes by way of grand jury investigation and indictment outweighs the possible loss of an informant and the consequent loss of the flow of certain information to the public.

The question raised by the *Bridge* case is whether the same equation holds true where the ultimate end of the grand jury is not to indict, but is to report. A report is a statement by a grand jury that it can find no evidence to support an indictment; yet, it finds that the circumstances demand criticism. Reports are restricted to the comments about governmental functions and the actions of public officials. A grand jury apparently may not report against a private person. *N.J. Court Rules, 1969*, R. 3:6-9; *See, In re Presentment by Camden County Grand Jury*, 34 N. J. 378, 169 A. 2d 465 (1961), *In re Grand Jury January, 1969*, 315 F. Supp. 662 (D. Md. 1970) and Note, *Grand Jury Reports Not Amounting to Presentments*, 18 Wayne L. Rev. 1643 (1972).

In the typical grand jury investigation, in one instance, sources of information should not dry up. Since grand jury proceedings are secret, if the grand jury does not indict, no one should ever know that an informant's statement had been spread before the grand jury. On the other hand, if the grand jury should indict it is said that society is better off if the administration of justice is served rather than predicating a privilege based upon the nebulous fear that sources of information would dry up. *Branzburg* v. *Hayes, supra.*

The instant case shows the extremes to which reports of grand juries can go without indictment and how the secrecy of the grand jury can be circumvented without an indictment. Mrs. Beatty and Mayor Gibson will certainly think twice before they will tell a reporter that they believe that corruption exists in the City of Newark. The report in this case has all of the majesty of a judicial act and approval of the judiciary. It is aimed at the elimination of robust political debate and is contrary to this fundamental principle of the First Amendment which has

for so long been vigilantly protected by this court. *See, Near* v. *Minnesota ex rel. Olsen,* 283 U. S. 697 (1931); *New York Times Co.* v. *Sullivan,* 376 U. S. 254 (1964), and *New York Times Company* v. *United States,* 403 U. S. 713 (1971).

Because a grand jury has the potential to issue a report rather than indict or refuse to indict when investigating governmental agencies or officials, the Court should recognize the grave mischief present in such a grand jury investigation and examine how such investigations should proceed when a newspaper reporter is called upon to give unpublished information received from a public official.

Until a grand jury completes its investigation, it should be impossible to know whether or not a report or indictment will be forthcoming. The Court is, therefore, respectfully urged to grant the writ and determine whether the possible grave mischief inherent in a grand jury's investigation of public officials requires that the State show at least a minimum of compelling need, relevancy and materiality before a reporter is obliged to bare open to the grand jury statements he has received from public officials who have made allegations of corruption in government. In the case at bar, the petitioner offered competent evidence that the information was not needed by the State, even if Bridge should know the identity of the alleged briber. This evidence was unrebutted by the State.

The Court should also grant the writ so that its ultimate decision will admonish prosecutors, attorney generals, lower courts and grand juries that abuses of the grand jury system as so vividly demonstrated in the *Bridge* case are strongly condemned by this Court.

The serious issue raised in this case should not be left to state legislatures to protect by shield legislation. If

the recent decisions in *Farr* v. *Superior Court of Los Angeles*, 22 Cal. App. 3rd 60, 99 Cal. Rptr. 342 (Dist. Ct. of App.), *Cert. denied*, —— U. S. —— (1972) and *In re Bridge, supra*, are any indication, even the most liberal of statutes may be construed out of usefulness unless this Court gives constitutional backbone to newsmens' newsgathering rights.

Lastly, the Court in *Branzburg* did not consider the important issue raised by this case. The courts of New Jersey have decided a case of grave constitutional moment which will have an effect not only upon New Jersey newsmen but will serve as a national precedent.

CONCLUSION

For the reasons stated, herein, the Court is respectfully urged to issue a writ of certiorari to the Superior Court of New Jersey, Appellate Division.

Respectfully submitted,

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Attorney for Petitioner

December 22, 1972

[APPENDICES FOLLOW]

APPENDIX A

Opinion of the Superior Court of New Jersey, Appellate Division

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2939-71

In the matter of,

PETER BRIDGE,

Charged with Contempt of Court.

Argued August 21, 1972—Decided Sep 12 1972

Befores Judges Collester, Carton and Allcorn.

On appeal from the Superior Court, Law Division, Essex County.

Mr. Edward J. Gilhooly argued the cause for appellant (Messrs. Yauch, Peterpaul & Clark, attorneys).

Mr. Richard L. Slavitt, Assistant Prosecutor, argued the cause for respondent (Mr. Joseph P. Lordi, Essex County Prosecutor, attorney).

Mr. Arthur Uscher argued the cause for American Civil Liberties Union of New Jersey as *amicus curiae,* by leave of court (Messrs. Friedman, Kates & Uscher, attorneys).

Appendix A

The opinion of the court was delivered by

COLLESTER, P.J.A.D.

This is an appeal by Peter Bridge from an order of the Superior Court, Law Division, holding him in contempt for refusing to answer five questions before the Essex County Grand Jury and confining him to the county jail until he purged himself by answering the questions posed. The trial judge stayed the order pending an appeal and we granted the prosecutor's motion to accelerate the appeal for early argument.

On May 2, 1972, the Newark Evening News published an article under Peter Bridge's by-line concerning an alleged offer of a bribe to Pearl Beatty, a member of the Newark Housing Authority. The article contained the following statements:

> Mrs. Pearl Beatty, a commissioner of the Newark Housing Authority, said yesterday an unknown man offered to pay her $10,000 to influence her vote for the appointment of an executive director of the authority.
>
> Mrs. Beatty said also that at least two other commissioners had been harassed and threatened in efforts to control their votes.
>
> • • •
>
> Mrs. Beatty said, "a man walked into my office and offered me $10,000 if I would vote for 'their' choice for executive director."

The Essex County Grand Jury commenced an investigation of the alleged bribe attempt and on May 19, 1972 subpoenaed Bridge to appear before it. Bridge moved to

quash the subpoena. Assignment Judge Giuliano denied the motion and ordered Bridge to appear before the grand jury. He rejected Bridge's contention that compelling him to testify would violate the guarantee of freedom of the press contained in the First Amendment. Judge Giuliano held that Bridge had waived the privilege afforded him by N.J.S.A. 2A:84A-21 (*Evidence Rule* 27) under the provisions of N.J.S.A. 2A:84-29 (*Evidence Rule* 37).

Bridge moved for leave to appeal from the order. This court granted leave and, following oral argument, affirmed the order denying the motion to quash and directing Bridge to appear before the grand jury. No appeal or petition for certification of the appeal was thereafter filed with the Supreme Court.

On June 8, 1972, following this court's decision, Bridge appeared before the grand jury. When he refused to answer certain questions he was brought before Judge Giuliano who, following a hearing, directed Bridge to answer. On June 14 Bridge again returned before the grand jury and refused to answer certain questions. Judge Giuliano ordered him to answer the questions, including the five questions which were the basis for the subsequent contempt action.[1] When Bridge subsequently refused to an-

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[1] The questions propounded to the witness were:

1. Mr. Bridge, would you please tell us whether Mrs. Beatty provided a description of the unknown man?

2. Did Mrs. Beatty provide you with specific acts of harassment and threats other than those outlined in the newspaper article?

(Footnote continued on following page)

swer the five questions before the grand jury, Judge Giuliano ordered Bridge to show cause why he should not be adjudged in contempt. The order was made returnable before Judge Meanor. Following a hearing, Judge Meanor held that Bridge had neither a constitutional privilege nor a statutory privilege to refuse to answer the questions. The judge entered an order adjudging Bridge to be in contempt of court and directed that he be confined to the county jail until he answered the five questions or until the grand jury was discharged. This appeal followed.

We first note that the two principal issues in this appeal, namely, (1) whether appellant waived his newspaperman's privilege accorded by *Evidence Rule* 27 (N.J. S.A. 2A:84A-21), and (2) whether the First Amendment grants him the privilege of refusing to testify before a grand jury, were raised on his prior appeal from the denial of the motion to quash the subpoena. In that appeal we held that appellant waived his privilege under *Evidence Rule* 27 by disclosing in the news article the source of his information and that compelling his appearance before a grand jury did not amount to an abridgement of

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(Footnote continued from preceding page)

3. Within the framework of this: "A man walked into my office and offered me $10,000 if I would vote for 'their' choice for executive director," did Mrs. Beatty indicate who their choice for executive director was?

4. Mr. Bridge, in addition to that which is contained in the article, what else did Mrs. Beatty say? Did she say it was a tall man, a white man, a black man, a heavy man, a short man?

5. Mr. Bridge, did Mrs. Beatty indicate when, in fact, the bribe offer took place?

his rights under the First Amendment. The issues having been decided on the merits in that appeal, the decision became the law of the case. *State* v. *Cusick,* 116 N. J. Super. 482, 485 (App. Div. 1971). However, rather than dismiss the appeal on that ground, not raised by either party, we prefer to decide the case on its merits.

The privilege of nondisclosure granted to a newspaperman in this State is set forth in *Evidence Rule* 27 (N.J. S.A. 2A:84A-21). It reads as follows:

> Subject to *Rule* 37, a person engaged on, connected with, or employed by, a newspaper has a privilege to refuse to disclose the source, author, means, agency or person from or through whom any information published in such newspaper was procured, obtained, supplied, furnished, or delivered.

Evidence Rule 37 (N.J.S.A. 2A:84A-29) provides that "a person waives his right or privilege to refuse to disclose * * * a specified matter if he * * * without coercion and with knowledge of his right or privilege, made disclosure of any part of the privileged matter * * *."

Appellant first argues that the term "source" in *Evidence Rule* 27 protects both the identity of the informant as well as that part of the informant's statement which was not published and that his disclosure of the identity of the informant does not constitute a waiver of his right of nondisclosure of the unpublished information. We conclude that the argument lacks substance. *Evidence Rule* 37 clearly states that a person waives his privilege of nondisclosure if he "made disclosure of any part of the privileged matter." *Cf. In re Murtha,* 115 N. J. Super. 380,

387-88 (App. Div. 1971), certif. den. 59 N. J. 239 (1971). Here appellant disclosed in the newspaper article that Mrs. Beatty was the source of his information and also disclosed at least part of the information given him by Mrs. Beatty. We are satisfied and hold that appellant waived his newspaperman's privilege and can be compelled to testify before the grand jury like any other person.

We find no merit in appellant's contention that *Evidence Rule* 37 (N.J.S.A. 2A:84A-29) is unconstitutionally vague.

We turn next to the question of whether appellant was privileged under the First Amendment to refuse to answer the five questions posed to him before the grand jury. In ruling that Bridge was not so privileged Judge Meanor relied on *Branzburg* v. *Hayes*, —— U. S. ——, 92 S. Ct. 2646, 33 L. ed. 2d 626 (1972). We are in full accord with Judge Meanor's ruling. In *Branzburg* the court laid down a broad rule that the First Amendment accords a newspaperman no privilege against appearing before a grand jury and answering questions as to either the identity of his news sources or information which he has received in confidence. The court specifically stated, "We are asked to create another [privilege] by interpreting the First Amendment to grant newsmen a testimonial privilege that other citizens do not enjoy. This we decline to do." (at ——, 92 S. Ct. at 260, 33 L. Ed. 2d at 644).

Appellant contends that if a reporter is required to testify before a grand jury concerning unpublished information received from a public official, such as Mrs. Beatty, then "government" will have an effective tool to prevent its wrongdoings from being brought to the attention of

the public; that not only must the identity of a public employee be protected but all unpublished information received from the public employee as well. He bases his argument on the dissenting opinions filed in *Branzburg*. We cannot agree with appellant's argument. A reading of the majority opinion in *Branzburg* indicates that the court there considered a similar argument and refused to accept it. See —— U. S. at ——, 92 S. Ct. at 2662-2664, 33 L. ed. 2d at 646-648. The court stated:

> Accepting the fact, however, that an undetermined number of informants not themselves implicated in crime will nevertheless, for whatever reason, refuse to talk to newsmen if they fear identification by a reporter in an official investigation, we cannot accept the argument that the public interest in possible future news about crime from undisclosed, unverified sources must take precedence over the public interest in pursuing and prosecuting those crimes reported to the press by informants and in thus deterring the commission of such crimes in the future. (at ——, 92 S. Ct. at 2663 (33 L. Ed. 2d at 647-648).

Appellant also contends that a majority of the justices in *Branzburg* held that society's interest in being informed, which requires a free flow of information, must be weighed against the state's interest in obtaining information relevant to the investigation of a particular crime. He alleges that the five questions which he refused to answer are so lacking in relevance and need that no matter upon whom the burden of proof is placed in balancing of the issues, it is clear that his rights as a reporter outweigh any right of the State. We do not read the majority opinion in *Branzburg* as requiring a balancing of the interests tests to determine when a reporter should

be compelled to testify. Quite to the contrary, Justice White in the majority opinion rejects such a contention, —— U. S. at ——, 92 S. Ct. 2665-2670, 33 L. ed. 2d at 650-655.

Moreover, we agree with Judge Meanor that the five questions which Bridge refused to answer were relevant to the inquiry being conducted by the grand jury to determine whether an offer to bribe a housing commissioner, in violation of N.J.S.A. 2A:93-6, had been made.

It is also argued that since the court in *Branzburg* stated that it was powerless to erect any bar to state courts construing their own constitutions so as to recognize a newspaperman's privilege, either qualified or absolute, we should construe N. J. Const., Art. I, par. 6 to include an absolute or qualified privilege for nwspapermen for the reasons expressed in the dissenting opinions filed in *Branzburg*. No decisions of our courts are cited in support of this proposition. The only privilege from non disclosure by a newspaperman in this State is set forth in Evidence Rule 27, enacted by the Legislature in 1960 (N.J.S.A. 2A:84A-21). We are satisfied that the granting of such privileges is a matter for the Legislature and not for the courts.

Finally, appellant argues that Judge Meanor lacked jurisdiction to enter the order under review because the sole issue on the return of the order to show cause was whether appellant was guilty of criminal contempt. He contends that a proceeding to compel him to answer the questions or be committed until he did so, brought pursuant to R. 1:10-5, could only be heard and determined by Judge Giuliano who issued the order to show cause.

Appendix A

We find no merit in appellant's contentions. The record indicates that the State did not seek to punish appellant for criminal contempt in a proceeding under R. 1:10-2 but to compel compliance with the order to answer the questions propounded before the grand jury. Such a proceeding has been held to constitute civil contempt, *Shillitani* v. *United States*, 384 U. S. 364 (1966), and is provided for under R. 1:10-5. See also *In re Contempt of Carton*, 48 N. J. 9 (1966), where the court stated, "Confinement terminable upon defendant's compliance is usually the hallmark of a civil proceeding." (at 23).

We do not read R. 1:10-5 to provide that the judge who issued the order to show cause alone has the power to hear and determine the issues raised in such a proceeding. As Assignment Judge, Judge Giuliano could properly assign the matter to another judge.

We have carefully considered the points raised in the brief filed by the *amicus curiae* all of which support appellant's conentions. We find none of the points to be persuasive.

The order under review is affirmed.

APPENDIX B

Order of New Jersey Supreme Court Denying Certification

SUPREME COURT OF NEW JERSEY
C-94 SEPTEMBER TERM 1972

IN RE:

PETER BRIDGE

TO APPELLATE DIVISION, SUPERIOR COURT:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied, with costs.

WITNESS the Honorable Joseph Weintraub Justice, at Trenton on the 26th day of September, 1972.

FLORENCE R. PESKOE
Acting Clerk of the Supreme Court

FILED
SEP. 26, 1972
FLORENCE R. PESKOE
Acting Clerk

APPENDIX C

Order of New Jersey Supreme Court Granting Stay

SUPREME COURT OF NEW JERSEY
M-58 SEPTEMBER TERM 1972

IN RE:

PETER BRIDGE

This matter having been duly presented to the Court, it is Ordered that the motion for stay is granted until September 26, 1972.

Witness, the Honorable Joseph Weintraub, Chief Justice, at Trenton, this 19th day of September, 1972.

FLORENCE R. PESKOE
Acting Clerk

FILED
SEP. 19, 1972
FLORENCE R. PESKOE
Acting Clerk

APPENDIX D

Order of New Jersey Supreme Court for Temporary Stay of Judgment

SUPREME COURT OF NEW JERSEY
C-94 SEPTEMBER TERM 1972

IN RE:

PETER BRIDGE

Application having been made for an Order Staying Judgment pending determination by the United States Supreme Court on a Petition for Writ of Certiorari to the Superior Court of New Jersey, Appellate Division, to be filed, and the Court having considered the same,

IT IS hereupon ORDERED this 27th day of September, 1972, that the application for stay is denied. It is further ORDERED that a Temporary Stay of Judgment is granted until 4:00 o'clock p.m. on the 3rd day of October, 1972, provided application for a stay of judgment is filed with the United States Supreme Court no later than the 28th day of September, 1972.

/s/ JOSEPH WEINTRAUB,
C.J.

APPENDIX E

Order of the Supreme Court of the United States

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

September 29, 1972

Edward J. Gilhooly, Esq.
Yauch, Peterpaul & Clark
11 Commerce Street
Newark, New Jersey 07102

RE: *Bridge* v. *New Jersey*, A-362.

Dear Mr. Gilhooly:

Your application for stay of judgment pending timely filing of petition for writ of certiorari in the above-entitled case was presented to Mr. Justice Brennan, who has endorsed thereon the following:

"Application denied

Wm. J. Brennan
Associate Justice
9/29/72."

Very truly yours,

MICHAEL RODAK, JR., Clerk
By FRANCIS J. LORSON
Assistant

FJL:ljl
cc: Essex County Prosecutor

APPENDIX F

Order of the Supreme Court of the United States

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

October 3, 1972

Edward J. Gilhooly, Esq.
Yauch, Peterpaul & Clark
11 Commerce St.
Newark, N. J. 07102

RE: *Peter Bridge* v. *New Jersey*
Application A-362

Dear Sir:

The Court today entered the following order in the above-entitled case:

> The application for a stay presented to Mr. Justice Douglas, and by him referred to the Court, is denied. Mr. Justice Douglas would grant the stay.

Very truly yours,

MICHAEL RODAK, JR., Clerk
By HELEN TAYLOR, (Mrs.)
Assistant Clerk

cc: Clerk
Supreme Court of
New Jersey
Trenton, New Jersey 08625

Joseph P. Lordi, Essex County Prosecutor
Essex County Courts Bldg.
Newark, N. J. 07102

APPENDIX G

Presentment

OFFICE OF THE GRAND JURY
OF THE
COUNTY OF ESSEX

CHARLES L. KAMPS, JR.
Grand Jury Clerk

Telephones
961-7224
961-7225

October 13, 1972

Mr. Peter Bridges
136 Beech Street
Belleville, New Jersey

Dear Mr. Bridges:

This is to advise you that on this date, the 16th Essex County Grand Jury of the 1971 Term has returned a Presentment, which Presentment was received and sealed by the Honorable James R. Giuliano, Judge of the Superior Court of New Jersey—Essex County Assignment Judge. I have been directed to serve you with a copy of the Presentment, which is enclosed herewith.

Should you desire a hearing as to the Presentment, you are advised that application be made to the Essex County Assignment Judge within ten days of this date and not later than October 24, 1972. If you do not desire a hearing, please notify the Essex County Assignment Judge as soon as possible.

Very truly yours,

CHARLES L. KAMPS, JR.
Director of the Grand Juries

CLK:rf
Enc.

Appendix G

ORDER IN RE: PRESENTMENT OF THE 16TH ESSEX COUNTY GRAND JURY, 1971 TERM

STATE OF NEW JERSEY,

vs.

MARIO GRANDE, ANTHONY IMPERIALE, KENNETH GIBSON, PEARL BEATTY, IRA JACKSON, JACK SIEGEL, RAYMOND STABILE, WILLIAM PURCELL, SR., PETER BRIDGES

In the matter of the Presentment of the 16th Grand Jury of the 1971 Term.

The 16th Grand Jury—1971 Term, having returned a Presentment to the Court on October 13, 1972, and the Court having ordered the Presentment received and sealed,

It is on this 13th day of October, 1972 ORDERED that the Clerk of the Essex County Grand Jury serve Mario Grande, Anthony Imperiale, Kenneth Gibson, Pearl Beatty, Ira Jackson, Jack Siegel, Raymond Stabile, William Purcell, Sr. and Peter Bridges with a copy of the Presentment; and it is further

ORDERED that the contents of the said Presentment not be revealed by the said Mario Grande, Anthony Imperiale, Kenneth Gibson, Pearl Beatty, Ira Jackson, Jack Siegel, Raymond Stabile, William Purcell, Sr. and Peter Bridges to any person other than their attorneys; and it is further

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ORDERED that the said Mario Grande, Anthony Imperiale, Kenneth Gibson, Pearl Beatty, Ira Jackson, Jack Siegel, Raymond Stabile, William Purcell, Sr. and Peter Bridges make no public comment with reference to the contents of the said Presentment until further ordered by the Court.

JAMES R. GIULIANO, A.J.S.C.

PRESENTMENT

On May 9, 1972, the Essex County Prosecutor requested this Grand Jury to investigate numerous allegations of illegal activities surrounding the operation of the Newark Housing Authority (NHA) and the appointment of an Executive-Director for that Agency.

In the process, this Grand Jury examined the statutes and ordinances creating and empowering the Newark Housing Authority to act, the case law interpreting same, the by-laws of the Authority, minutes of the monthly and special meetings of the Commission dating back to February 16, 1972 voluminous exhibits numbering 40 and heard 51 witnesses during sessions over a period of 18 days.

This matter had its genesis as a Grand Jury investigation on or about April 30th, 1972, when a news article appeared in the Newark Star Ledger quoting Kenneth A. Gibson, the Mayor of Newark as "suspecting" that an "Attempt to force the selection of an executive director of the Newark Housing Authority is being manipulated by organized criminal elements in the Newark area." The position of executive director at the time was filled by the Housing Authority's General Counsel on an interim basis

until a permanent executive director could be appointed, the previous executive director having been given written notice on January 12, 1972, of his retirement to become effective March 1, 1972. In the same article, the Mayor was quoted as saying that he "will not sit by and let it (NHA) be run by corrupt elements" and that his "administration will not process any applications, urban renewal projects, cooperation agreements or any other normally expected actions related to the Newark Housing Authority." This latter statement was also made in a letter to Housing and Urban Development Secretary, George Romney, dated April 28, 1972 which was released to the news media. In the same news article, the Mayor also alleged that certain Housing Authority Commissioners had been "threatened and told how to vote", specifically mentioning that a particular Commissioner, William F. Purcell, Sr., was "threatened with bodily harm if he does not follow orders."

The following Tuesday, May 2, 1972, an article appeared in the Evening News in which Pearl Beatty, a Housing Commissioner appointed by the Mayor, alleged that she was offered $10,000 to influence her vote in the appointment of an executive director of the Authority. The article also alleged that Commissioner Raymond P. Stabile was kidnapped and held several hours in an attempt to dissuade him from supporting the Mayor's choice for executive director and that Commissioner Purcell was physically assaulted and pressured to refrain from supporting the Mayor's choice. These statements were attributed to Commissioner Pearl Beatty.

Commissioner Purcell was also quoted in the article as stating that the Mayor was exerting pressure upon him and he was told if he "did not vote for the Mayor's choice

for executive director, that the funds of the Newark Housing Authority would be cut off and this would result in the laying off of many Housing Authority employees." There was no indication in the article as to who made this latter statement. The article also implied that the physical assault upon William F. Purcell, Sr. was directly connected to his stand on the executive directorship. He was also quoted as saying, "shortly after I let it be known that I was supporting Robert Notte for the executive director, I was beaten by four black assailants." This article also referred to that portion of the Mayor's letter to Secretary Romney, previously made public by the Mayor that "If an executive director is selected at the May 2, 1972 meeting (the Mayor) will have no further official relations with the Newark Housing Authority."

There next appeared in the Newark Star Ledger on May 3, 1972 an article, not only recounting the previous charge made by the Mayor, but also adding charges made by the Assemblyman Anthony Imperiale from Newark alleging that on March 30, 1972, the Mayor offered the Assemblyman or someone of his choice two municipal judgeships or two high positions in the Newark Model Cities Program if he would back the Mayor's choice for the NHA executive-directorship. In the same article, Mayor Gibson denied the charges and alleged that Assemblyman Imperiale set up a picket line around the house of NHA Commissioner Stabile, a candidate for the position of executive director, and that Assemblyman Imperiale told the Mayor that he could pressure Commissioner Stabile to support the Assemblyman's candidate. A similar article also appeared in the Evening News on May 3, 1972.

With the exception of the offer of the judgeships or Model Cities jobs, these charges and counter-charges had already been presented to the County Prosecutor.

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Because of the complex nature of the investigation and the public disclosure of the charges and counter-charges, the Prosecutor requested that this Grand Jury investigate the charges to determine whether the criminal laws had been violated and if so to take proper action. During the course of the Grand Jury investigation, additional charges were made and received from both anonymous and named sources. However, the evidence presented in support of the charges was insufficient to warrant the return of an indictment or indictments. By the attendant publicity, the Grand Jury is impelled to make this presentment.

The investigation undertaken by this Grand Jury also considered whether the charges and counter-charges appearing in the public press and those charges made during our investigation were meritorious and to determine, after having competent evidence, what action should be taken by the Grand Jury. The following course of action was taken.

In order to fully understand this presentment, it is necessary to become familiar with the creation of the NHA and the implementation of the laws giving it life.

For many long years, this country has been actively concerned with the problems of slum clearance, the creation and maintenance of sufficient and adequate low-income housing, urban renewal, and the rehabilitation and re-development of blighted areas. In 1937, the United States Housing Act gave initial impetus to this effort. This law, as amended and supplemented from time to time, has made available to local communities very large sums of money by way of Federal subsidy. The program requires implementation at the State level in the form of

legislation permitting the creation in local communities of instrumentalities designed to carry out the legislative purposes. In New Jersey, the Local Housing Authorities Law was enacted for this purpose. This statute permits, but does not require, municipalities to establish municipal housing authorities. This was the course of action the City of Newark chose to follow and did so by an Ordinance creating the Housing Authority of the City of Newark, which said Ordinance was adopted by the Board of Commissioners of the City on March 23, 1938.[1]

An authority consists of six members, five of whom are appointed by the governing body of the municipality,[2] and the sixth by the chief executive officer of the State Department of Community Affairs. The authority is a public body corporate and politic exercising public and essential governmental functions. Among other functions, it is authorized to sue and be sued, to have perpetual succession, make and execute contracts, and make, amend, and repeal by-laws, rules, and regulations. Among other powers, it may acquire lease, operate, construct, re-construct, improve, alter, or repair housing projects, may determine where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations

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[1] An ordinance adopted September 7, 1949, extended the powers of the Newark Housing Authority by authorizing that Agency to act as the re-development agency for slum clearance and urban development.

[2] Under provisions of the Faulkner Act, setting up a Mayor and Council form of government in municipalities, rather than a commission form of government (Walsh Act), it is the prerogative of the Mayor to select a candidate for the position of Housing Authority Commissioner with the advice and consent of the Council.

for persons of low income; may acquire, demolish, or rehabilitate buildings as well as install or construct streets, utilities, parks, and playgrounds; and may cooperate with any public body, including the municipality by which it has been created in any action taken in connection with any such problems. These powers are obviously broad and comprehensive, and it is clearly the legislative design that an entity clothed with powers of such amplitude should be an important and influential arm of government in the community in which it is empowered to act.

At the same time, a considerable degree of control over a housing authority rests with the governing body of the municipality. For example, it must authorize by ordinance the initiation and carrying out of any re-development project; it may determine the existence of "blighted areas"; it may require the authority, its officers, or employees, to comply with the provisions of any approved re-development plan and to file in the manner prescribed by the governing body reports and answers to specific questions. Annual estimates must receive municipal approval and expenditures or disbursements lacking such approval are forbidden.

It is clear that the drafters of this legislation contemplated that there would be effective cooperation between a local housing authority and the municipality which had brought it to life. In addition to including a provision looking to this end, in the Local Housing Authority Law itself, the same legislature adopted at exactly the same time, the Housing Cooperation Law which expressly authorized municipalities to cooperate with their local housing authorities in a variety of ways. For example, municipal property may be dedicated, sold, conveyed, or leased

to an authority; planning, zoning, and building regulations may be altered; and in general, anything may be done, necessary or convenient, to aid and cooperate in the planning, undertaking, construction, or operation of housing or re-development projects.

In light of this background, we made our examination and present our findings:

Findings

Re: *The substance of the charge of the Mayor that there is an attempt to force the selection of an executive-director of the Newark Housing Authority being manipulated by organized crime.*

At the initial stages of this investigation, an aide to Mayor Gibson, one Ira A. Jackson, who is no longer a part of the Administration of the City of Newark, with the Mayor's knowledge and acquiescence, presented himself to the Prosecutor's Office, and under oath, prior to any public statement by the Mayor, made the following allegations which were in essence those of the Mayor and which were reiterated to this Grand Jury:

1. One of the candidates for the executive directorship in some manner is affiliated with organized crime.

2. Two of the NHA Commissioners were at different times offered bribes in return for that Commissioner's vote on the executive directorship.

3. One of the NHA Commissioners was pressured, intimidated, and harrassed to change his vote on the executive directorship by, among other things, having his life threatened and loss of employment threatened.

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4. One of the NHA Commissioners would be in actual fear of his life if he failed to vote for a particular candidate.

5. According to sources in City Hall, he, the Aide, was alternately threatened and obsequiously flattered because of his involvement with the NHA.

These allegations constitute the entire frame of reference presented to this Grand Jury to support a charge that there was an attempt to force the selection of an executive director of the NHA being manipulated by organized crime. They are considered individually below.

Concerning Allegation 1, that one of the candidates for the executive directorship is in some manner affiliated with organized crime, our investigation revealed that this allegation was stimulated in part by anonymous letters sent to various governmental officials and in part by rumors circulated widely within the NHA. In appearing before this Grand Jury, the Mayor cited various admittedly-unconfirmed, unsubstantiated reports to which he was privy as the Chief Executive of the City. He also stated before this Grand Jury that several high level members of the previous administration, after its defeat, had found positions of employment in the NHA. He also cited the bribe attempts upon Commissioner Beatty. When pressed for further sources, the Mayor was unable to provide any; and, in fact, when asked specifically what led him to conclude that "there is an attempt to force the selection of the executive-director being manipulated by organized crime", Mayor Gibson emphasized that he made no such conclusion but merely suspected such an attempt and specifically stated that he makes no allegation which he can support factually that organized criminal elements

are seeking to manipulate the selection of the executive director. In response to a further question as to whether he could provide one instance where any person associated with organized crime approached him or any member of his staff or any councilman in the City to manipulate the appointment of the Executive Director, the Mayor was unable to do so.

Nonetheless, because of the seriousness of the allegation, because of the distinct adverse effect, if true, upon the City of Newark, this Grand Jury felt it incumbent to make a more thorough investigation. The primary basis for the allegation here under consideration can generally be taken from the contents of a particular anonymous letter directed to all Commissioners because this letter reduces to writing the rumors circulated within the NHA and contains generally the information to which the Mayor was privy as Chief Executive of the City.

The allegation concerning the attempted bribe will be dealt with separately herein. As to the employment of high ranking aides in the previous administration by the Housing Authority, the Mayor in no way was able to connect these individuals with any criminal activity.

One of the allegations in the anonymous letter was that now there was an opportunity to make a change in leadership of the NHA; one of the principal candidates for the Executive Directorship, Robert Notte, who during this investigation was appointed to the post is the son-in-law of a notorious organized-crime figure who would be controlled by that person and resides in a $70,000 home in an exclusive suburban community. The implication here, of course, is that Mr. Notte would be unable to afford such a home without tainted financial resources. Concerning

the alleged $70,000 home which in fact was purchased by Mr. Notte, the evidence presented reveals that it is well within the realm of probability based upon income from the NHA as well as other legitimate sources, that Mr. Notte had and has the financial capability to purchase and carry such property. The investigation further revealed that the notorious organized-crime figure, referred to, is 76 years of age, that on one occasion he was charged with carrying a weapon illegally over 30 years ago, which charge was dismissed, that he lives frugally, and that his sources of income have the appearance of being legitimate. In the past he has known persons reputed to be organized-crime figures. The testimony further revealed that at no time did this individual or anyone on his behalf attempt to influence any person connected with the NHA for the purpose of influencing the the vote on the executive-directorship. Finally, while it is true that Mr. Notte and this individual are father-in-law and son-in-law, nothing in this investigation indicates that there is any business relationship, any interference, or any social relationship other than the usual father-in-law, son-in-law relationship existing between the two.

Parenthetically, it should be noted that this Grand Jury unqualifiedly condemns and criticized scurrilous vituperate anonymous letter of the type submitted herein for the purpose of attempting to give substance to unsubstantiated rumor. The right of confrontation has been a primary constitutional right since the founding of our country. To hide behind a cloak of anonymity is so vicious and unsubstantiated attacks is cowardly and weakens valid criticism. However, we recognize the need of the

use of anonymous letters where the writer must, for legitimate fear of reprisal, remain anonymous.

Having made what we consider to be a detailed and thorough investigation as to Allegation 1. the Grand Jury finds the allegation was based upon mere suspicion, conjecture, speculation, and without substance.

We turn now to Allegation 2; namely, that two NHA Commissioners were, at different times, offered bribes in return for said Commissioner's votes in the election of the executive directorship. Once incident can be disposed of simply; the second is more complex.

In the first incident, the Mayor's aide, Mr. Jackson, reported that one of the Commissioners, Dr. Jack Siegel, immediately prior to a meeting of the NHA Commissioners on or about February 16, 1972, advised him that he, the Commissioner, had just been offered a bribe. It was determined that, at no time, did the Commissioner identify the offeror or state the amount. The only participants in this conversation were Commissioner Siegel and Mr. Jackson.

Dr. Siegel was called before the jury and emphatically denied that such an incident ever took place. Since the testimony is diametrically opposed and since there is no corroboration of the allegation, the truth of this allegation could not be determined by this Grand Jury in view of evidence presented.

The second allegation has a much more complex aura. In the initial sworn statement taken from Mr. Jackson on February 18, 1972, it was reported that six or eight weeks prior thereto Commissioner Pearl Beatty reportedly was approached in a City Hall Office by two black men who

solicited, "cooperation in regard to matters relative to the Housing Authority generally and the appointment of the executive director specifically in exchange for a sum of money." No amount was mentioned and Commissioner Beatty did not recall the names of the individuals or upon whose behalf they were soliciting. Thereafter, on March 2, 1972, Commissioner Beatty was interviewed by the Prosecutor's Office and she recounted under oath that two months prior to the interview, she received a telephone call at a City Hall Office during which the caller stated that if she voted for the right man, *they* would give her $5,000. (This was later corrected to *he*). The individual who telephoned was unknown to Commissioner Beatty, did not state who the right man was, who would pay the five thousand dollars, and never identified himself. She further stated in this interview that on a later date she also received a telephone call at home during which the same conversation took place.

On May 2, 1972, a newspaper article appeared in the Evening News in which a third version of the same event or series of events appeared. In that article, under the by-line of one Peter Bridge, a direct quote from Commissioner Beatty appeared, the substance of which is that one man walked into the Commissioner's Office and offered the sum of $10,000 to influence her vote if she would vote for the choice of the person offering the bribe.

It should here be noted that in an effort to leave no stone unturned, Reporter Bridge was subpoenaed to testify, did appear, answered some questions, refused to answer others, was ordered to answer these questions by the Court, appealed the order to all available tribunals, has thus far been unsuccessful in his appeals. He still re-

fuses to answer the questions propounded and has been adjudged in contempt of court. By reason of the position taken by Mr. Bridge, our investigation was hindered and is incomplete. The testimony of Mr. Bridge was that his interview with Mrs. Beatty was a lengthy one, in which she said many things which were not contained in the article but nothing was "off the record." He admits he does recall portions of the conversation with Mrs. Beatty other than that which was reported in the article, although he took no notes during the interview and had no reportorial devices used to record direct quotes. It is interesting to note that he never had a pencil and paper in hand during the interview taking the quotes verbatim, nor did he verify direct quotes with Mrs. Beatty before publication. Mr. Bridge gives as his reason for refusing to answer questions that the information is privileged because it was not contained in the article, thereby failing to comprehend the difference between privileged information and a privilege that attaches to an individual, thereby frustrating the Jury's investigation into a potentially criminal act.

While we recognize the constitutional amendments relating to freedom of the press and freedom of speech and the statutory privilege permitting a journalist to conceal his source; nonetheless, a misguided reliance upon principle not privilege for principles sake, in refusing to cooperate with the search for truth must not be countenanced especially when such reliance interdicts an attempt to obtain a full disclosure of the facts. This is not a case in which the reporter sought to protect his source; in which the interview was "off the record"; or where the reporter withheld all so-called privileged material. We question whether there is valid reason even in the further-

ance of sound news reporting for the refusal of Mr. Bridge to disclose all of which Mrs. Beatty had told him. The only person his erroneous invocation of privilege sought to protect was that person who allegedly attempted to bribe Mrs. Beatty. To that person, Mr. Bridge owed no debt of silence but about that person, Mr. Bridge owed the people of New Jersey his full cooperation.

It is the opinion of this Jury that when a journalist is in possession of facts which will aid in the pursuit of truth, he stands in no favored position but has the same responsibility as any other citizen although he may refuse to disclose the source of his information.

To return to the alleged bribery attempt on May 15, 16, Commissioner Beatty before the Grand Jury recounted that in the latter part of December, 1971 around the holidays, a black man walked into her office and made a gesture indicating he would give the Commissioner five thousand dollars if she voted for the right man and if that was not enough the price would increase to ten thousand dollars. Although secretaries were in the office at the time, neither of them remembered anything of the incident and Commissioner Beatty made no mention of it to them until the article appeared in the paper. The Commissioner again could provide no description, name, or identification of the individual. She again stated that she was called at home and the same bribe offer was again made. Before the Grand Jury, the Commissioner also indicated that a named black individual approached her with the proposition that white forces unnamed in the City of Newark woudl accept a black executive director in the NHA if two named white individuals would be "taken care of." The black individual who testified before the Grand Jury denied any such confrontation and the white individuals

who were allegedly supposed to be "taken care of" denied any knowledge of any such arrangement.

In reply to a series of questions as to why this incident was not reported to the proper authorities, why a proper identification could not be made, why there were numerous versions given to the same incident, Commissioner Beatty gave fear as the primary reason and distortion by the newspapers of the interview as a secondary reason.

To add to confusion, another individual Mario Grande did appear and swear before this body that he did, in jest, suggest to Commissioner Beatty that the problems of the election of the executive director could be solved by permitting him to pick the executive director in exchange for the sum of $10,000. Commissioner Beatty was recalled and asked whether the individual was an acquaintance to which an affirmative answer was given. When questioned as to whether this was the individual who made the offer, the Commissioner emphatically denied it. In evaluating the testimony concerning this latter incident it became apparent that the testimony of the individual claiming he made the offer lacked sufficient credibility to be believed.

As to the remainder of the incident, because of the diversity of stories given by Commissioner Beatty, the lack of corroboration and the lack of cooperation by Peter Bridge and the resultant confusion caused thereby, this jury has serious reservations as to whether such a bribe attempt was ever made.

Allegation 3 charged that Commissioner Purcell was pressured, intimidated, and harassed to change his vote on the executive directorship and that the pressure, intimidation, and harassment consisted, among other things, of

threatening his life and threatening to have him fired from his position.

This charge was explored in great depth by this Grand Jury. All the Commissioners of the Authority and Mayor Gibson were questioned at length concerning it since the charges were made several times allegedly in the presence of one or more Commissioners and directly to the Mayor. Again, confusion reigned. In investigating the charges, it became apparent that there were, on the Board of Commissioners, two factions; one loosely aligned with the Mayor and receptive to a suggestion put forth by him that an interim executive director be appointed until a national talent hunt could be made to search for the most capable person to become executive director, and the other faction opposed to that suggestion who were aligned behind Robert Notte.

Our investigation reveals factually as follows:

Since the early fall of 1971, it was general knowledge that the then executive director would resign his position. The exact date, however, was unknown until January 12, 1972, at which time he wrote a letter of resignation setting March 1, 1972, as his retirement date. All during this time, nothing of an affirmation nature was done concerning the appointment to fill the vacancy. Several persons let it be known to the Commissioners individually that they were interested in the position and asked the Commissioners to espouse their cause. One Commissioner Raymond P. Stabile was, himself, in fact, interested in the position and submitted a resume. Up to February 15, 1972, it appears this was the only resume submitted. The Mayor, realizing that time was growing short and having heard that Robert Notte, an individual with whom he felt

he could not work closely and whose background he questioned was going to be nominated for the position, called a meeting on February 15, 1972, to which were invited all the Commissioners, the then executive director, and Ira Jackson, who initially brought the charges to the Prosecutor. All appeared but one Commissioner who was the chairman of the Commission. The Mayor suggested that before selecting a new permanent executive director, that a national talent hunt for the best available person be conducted and that a particular individual be appointed as interim executive director. This suggestion was accepted and it was anticipated that this course of action would be followed. At this meeting, Commissioner Purcell who was allegedly pressured, harrassed, and threatened, in fact, made a speech generally laudatory of the Mayor and his suggestion. Some time between the end of this meeting in the Mayor's Office and the scheduled commencement of the Commission meeting the next day at which this suggestion was to be put into effect, Commissioner Purcell changed his mind and decided to cast his vote for Robert Notte, the particular candidate who was objectionable to the Mayor. The reasons for this change were alleged to be threats, harrassment, and pressure. To lend credence to the charges, several Commissioners, those generally in agreement with the Mayor's suggestion, testified that Commissioner Purcell actually made remarks either at or immediately prior to the Commission meeting on February 16, 1972 describing a series of intimidating phone calls the substance of which was that he was threatened, harrassed, and pressured by various sources and that his employment was in jeopardy if he did not vote for Robert Notte. The minutes of the meeting do not reflect any such remarks and the Commissioners not in agreement with the Mayor's suggestion,

deny hearing any such remarks. Commissioner Purcell before this Grand Jury categorically denies making such remarks. A review of all facts and circumstances leads us to concluded as most credible the view of an unbiased objective observer at this meeting, who testified that Commissioner Purcell did use the phrase *intimidation and harrassment* without indicating who was intimidating and harrassing him, and did state he had never received so many phone calls over one issue but nothing further took place.

Accordingly, we, the Grand Jury, find that the allegations are an over-reaction to a statement blown greatly out of proportion by reason of the atmosphere of tension created by the political in-fighting for the position of executive director and in no event did this series of incidents constitute threats, pressure, or intimidation by organized criminal elements.

During the taking of testimony, it was charged that this meeting, above-referred to in the Mayor's Office, constituted an undue and unwarranted interference with an autonomous body. This implication was also apparent in the quotes attributed to an Assemblyman Imperiale in the local press. It is the opinion of this Jury that such is not the case and, in fact, under both the spirit and letter of the law, the Mayor was acting properly in attempting to assure that cooperation between the local housing authority and the municipality which gave it life, was effected. The facts show the meeting was harmonious, undertaken in a spirit of cooperation and was not intended to be a disruptive influence; the plan of action was suggested, not demanded, and there was no actual or implied threat or intimidation.

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Allegation 4 charged that Commissioner Stabile was in fear of his life if he failed to vote for a particular candidate. The plain implication here is that such fear was caused by threats from individuals associated with organized crime. To buttress this charge, there was a report in the local press attributed to Commissioner Beatty that Commissioner Stabile was kidnapped and held captive for hours to induce him to vote for a specific candidate; additionally, the demonstration in front of Commissioner Stabile's house was cited as proof as was a conversation preceding the Commissioin meeting on February 16, 1972 in which Commissioner Stabile remarked he would be murdered if he did not vote for a specified individual.

Commissioner Stabile was called to testify and did so with the utmost candor. He indicated that he himself was a candidate for the position of executive director, that Assemblyman Imperiale had, on numerous occasions, attempted to persuade him to drop his candidacy, to vote for Robert Notte supported by the Assemblyman; that he considered the manner in which he was approached to be harassment and pressure, (Assemblyman Imperiale also candidly agreed with this characterization but felt it to be a fair political tactic), that he had made the remark that he would be murdered if he didn't vote properly, that there was a demonstration in front of his home, and that the totality of the circumstances caused him uneasiness, fear, embarrassment, and humiliation indicating further that by that particular remark was meant his political demise, not actual physical murder.

We conclude, therefore, that there was harrassment and pressure placed upon this Commissioner. Public issues, however, should be the subject of uninhibited, ro-

bust, and wide-open debate; that it may include vehement, caustic, unpleasantly sharp attacks that may not always be in good taste is regrettable—to be the subject of such villification is to suffer, one of the annoyances which must be suffered by public officials by virtue of their office.

Since the demonstration created much of the distress a discussion is here relevant.

On February 27, 1972, a Sunday, Commissioner Stabile returned home in the middle of the day and was confronted by a picket line, variously estimated at between 30-50 persons singing Italian songs, chanting in unison, and carry placards accusing the Commissioner, himself an Italian-American, with being anti-Italian. Some photographs were taken of the incident and from these photographs marchers were identified and subpoenaed to appear before the Grand Jury. Of these six marchers, only one was a resident of the City of Newark, all six were members of a particular carpenters union, none knew that Commissioner Stabile was himself a candidate for the position of executive director, none knew the specific reason why they were there or why they were demonstrating. One demonstrator even went so far as to say that he initially thought he was demonstrating in support of Commissioner Stabile, but when he found the demonstration was against the Commissioner, he stayed anyway because Assemblyman Imperiale asked him to do so. All the demonstrators came solely because they were asked by Assemblyman Imperiale.

We recognize the right of the citizens of this country to assemble peacefully, we recognize that demonstrations have a place in society as a legitimate means of social protest, we recognize demonstrations as a legitimate

means of expression of opposition to particular issues, and we specifically find this demonstration to have been carried on peacefully without disorder.

However, contemporary American society would be greatly benefited if those members of society who consider themselves community leaders and our elected officials were as aware of their responsibilities as they are solicitous that their privileges remain unimpaired. It is indeed a sad state of affairs when our public officials give the outward appearance of creating situations for their personal political benefit by injecting ethnic or racial overtones into valid political issues where legitimately there are or should be none. We can ill afford public and truculent activities which could very well serve to create tension in a city. Our community leaders should be striving for peace and harmony rather than disruption and polarization. Greater restraint rather than greater activity is the greater good.

Allegation 5 concerned an anticipated attempt upon the life of Ira Jackson by organized crime because of his involvement in matters relative to the NHA. In reporting this, Mr. Jackson indicated that a City government official approached him and informed him that he was now number one or two on a list of persons marked for execution and he better be careful. This government official was named and was called to testify. He admitted making the remark but said it was in the spirit of fun. We find this to be so and accordingly conclude that organized criminal element never anticipated the execution of this aide.

Allegation 6 states that at a particular social affair that Ira Jackson was alternately threatened and obsequi-

ously flattered because of his involvement with the NHA. The implication here, of course, was that such actions were undertaken by organized criminal elements.

In view of the fact that Mr. Jackson now concedes that upon reflection, he might have taken this incident too seriously, it is unnecessary to detail the testimony. Suffice to say we did delve into the incident in depth, questioned not only the alleged antagonist, but also an identified eyewitness and found there was a discussion between the parties, but this discussion did not reach the magnitude of a criminal act and in no way was this incident linked to organized criminal elements.

Re: *Other allegations from Ira Jackson*

A great many corollary allegations of a relatively minor and immaterial significance were presented to the jury and examined. While we did consider them in our investigation, we find them unworthy of special comment.

Re: *The substance of the allegation that the Mayor offered the Assemblyman of the Independent Party or someone of his choice, two Municipal Judgeships or two high positions in the Newark Model Cities Program if the Assemblyman would back the Mayor's choice for the NHA executive directorship*

At first blush, the named assertion has the aura of an allegation of an attempted bribe. Such is not the case. In fact, the testimony which was equal in both quality and quantity, each principal testifying supported by a trusted aide who was present at the meeting at which this incident allegedly took place revealed that the incident consisted

of two political figures, each leaders of a particular vocal faction within the City attempting to adjust patronage which each, because of his view of tradition, felt belonged exclusively to his faction.

In testifying in elaboration of the incident, Assemblyman Imperiale stated that the Mayor "did not say the right to name. He offered me to submit two names for consideration for judgeship," and that as a result of this he, the Assemblyman, concluded that he had the right to name two judges if he came to an understanding with the Mayor on the executive directorship.

The Mayor emphatically denies offering the Assemblyman or anyone else the right to choose municipal judges or persons for high level positions in the Model Cities Program. He did, however, indicate that the theme of the meeting centered around the Assemblyman's concern that the number of Italian-Americans in high-level positions in the City of Newark was being reduced, and that the position of the executive director should be filled by an Italian-American.

Patronage is a fact of political life. In our democratic process, the reins of government are constantly changing hands. When such a change takes place, governments are reorganized, trusted advisers of the current administration are placed in positions of responsibility and power. In theory, it is assumed that the appointing power will be guided by the qualifications, experience, and expertise of the candidate he seeks to appoint to a specific position; too often, however, cronyism and nepotism are the prime considerations and this, of course, gives rise to the general condemnation of government by patronage.

Appendix G

Re: *The published statement of the Mayor that his administration will have no further officials relations with the Newark Housing Authority and will not process and application, Urban Renewal Projects, cooperation agreements, or other normally expected actions relating to the Newark Housing Authority if a certain course of action were followed by the Newark Housing Authority*

The April 28th letter, to Secretary Romney, was duly reported in the local press causing Assemblyman Imperiale to charge this to be an unlawful and unwarranted interference with an autonomous agency.

Before this jury, the Mayor explained that he injected himself into the selection of the executive directorship and issued this declaration because the Housing Commission was not validly searching for the most qualified individual as evidenced by the fact that they did not publicize the impending vacancy and request resumes, was not acting with the degree of caution required for the decision and that he felt a responsibility to his constituency. We find the Mayor's motives to be valid and his interjection not improper under the circumstances. We do not mean to imply that any of the Candidates were not qualified.

Re: *The use of the local press by the Mayor of the City of Newark and the Independent Assemblyman from the City of Newark to publicize the charges and counter charges concerning the Newark Housing Authority*

As noted previously, the charges and counter charges which gave rise to this investigation were reported to the local press and duly published at length.

Appendix G

Both Mayor Gibson and Assemblyman Imperiale agreed that the charges made by them were "unprovable."

The Mayor's rationale was that even though his information was based upon suspicion and conjecture, he said before this Grand Jury, "one of the sources that we have, as public officials, is to inform the public through news media."

The Assemblyman's rationale was that the Mayor was interfering improperly, he could not stand idly by and he wanted the people to know it.

We strongly disagree with the rationale of both parties.

Statements based upon suspicions and conjecture as admitted by the Mayor or which are unprovable as admitted by the Assemblyman should not be uttered by responsible public officials. These officials cannot abandon the mantle of office because at all times they speak as representatives of the people. It takes only common sense to realize that when one speaks from the vantage point of a particular office he is presumed to speak with inside information and proper knowledge. Comments made by public officials are accepted as highly trustworthy and allegations made by public officials are usually accepted as authentic by the public.

Public officials, therefore, should not make charges, allegations or issue statements based upon mere suspicion, conjecture, surmise and unprovable facts. When such charges, allegation or statements are made the public interest is ill served.

It is requested that the Clerk of the Essex County Grand Jury forward copies of this Grand Jury presentment to the following:

Appendix G

1. Governor William T. Cahill
2. Attorney General George Kugler
3. President of the Senate Raymond H. Bateman
4. Speaker of the House of Assembly Thomas H. Kean
5. Secretary of Housing and Urban Development George Romney
6. Congressman Joseph Minish
7. Congressman Peter W. Rodino, Jr.
8. Each present Commissioner of the Newark Housing Commission
9. Each present Councilman of the City of Newark
10. News media with circulation in the County of Essex

Respectfully submitted,

BENJAMIN GILBERT
Foreman

APPENDIX H

Application for Stay Before Appellate Division of Appellate Proceedings and for an Order for Production of Documents

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-2939-71

IN THE MATTER OF

PETER BRIDGE,

CHARGED WITH CONTEMPT OF COURT

PLEASE TAKE NOTICE that I am applying to the Superior Court of New Jersey, Appellate Division, (1) for an Order compelling the Essex County Prosecutor to state whether or not a proposed presentment with respect to the Essex County Grand Jury investigation of the Newark Housing Authority has been prepared; (2) for an order requiring the Essex County Prosecutor to affirm or deny that the proposed presentment, if it exists, is critical of public officials for attempting to use the press or other media for political gain; (3) for an order requiring the Essex County Prosecutor to make available to counsel for Peter Bridge a copy of the proposed presentment if the Prosecutor answers affirmatively requests number (1) and (2); (4) for an order staying the Appellate proceedings for a period sufficient to allow an adequate review of the

proposed presentment and to allow for any subsequent action which might be necessitated after a review of the proposed amendment.

YAUCH, PETERPAUL & CLARK
Attorneys for Peter Bridge
By: EDWARD J. GILHOOLY

Date: August 9, 1972

AFFIDAVIT IN SUPPORT OF APPLICATION FOR STAY, ETC.

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } ss.:

EDWARD J. GILHOOLY, being duly sworn according to law, upon his oath, deposes and says:

1. I am associated with the firm of Yauch, Peterpaul & Clark, attorneys for Peter Bridge, Appellant.

2. On Wednesday, August 2, 1972, I received information from a certain person that the Essex County Grand Jury had prepared a proposed presentment in regard to its investigation of the Newark Housing Authority.

3. On Friday, August 4, 1972, I made inquiry by telephone call to the Essex County Prosecutor. Assistant Prosecutor, John Matthews, III, advised me that he could not affirm or deny the existence of a proposed presentment and that, in any event, I could not see it if it existed. In that the Assistant Prosecutor assigned to this case was

not available, I asked Mr. Matthews if I could accept his statement as the official answer of the Prosecutor's Office. He stated that I could.

4. Except for Paragraph 3, this Affidavit is based wholly on hearsay and is not presented to substantiate the truth of any allegation. It is submitted for the purpose of establishing that I did receive information of a proposed presentment.

5. If such a proposed presentment has been prepared, it may be of great importance to Peter Bridge's appeal.

6. I have been told by reliaable sources that the presentment is critical of certain officials in Newark for using the media improperly; but there is not adequate proof of criminal wrong for the purpose of indictment.

7. If a presentment exists in the form alleged, it may well have significance to Peter Bridge for at least two reasons:

A. Since Peter Bridge was cited for what is commonly called "Civil Contempt" now called "Relief to a Litigant" under Rule 1:10-5, if his testimony subsequently becomes unnecessary, he might argue that the proceeding should be dismissed against him.

B. Furthermore, in Point II of Appellant's Brief on the Merits, Appellant contends that information received from Public Officials should be protected constitutionally since the government could possibly use the grand jury to the detriment of the people's right to know of corruption and other wrongdoing in the government. If a presentment exists which is critical of government employees for

talking to the press, the argument may be given great impetus. Only a reading of the presentment can determine the fact.

8. Deponent can see no useful purpose in divulging the source of his information but will do so in camera if desired by the court.

s/ EDWARD J. GILHOOLY

(Sworn to August 9, 1972.)

APPENDIX 1

Newspaper Article Written by Peter Bridge

(Filed—May 23, 1972.)

CITY HOUSING AIDE REPEATS BRIBE OFFER

May 2, 1972

By: Peter J. Bridge

Evening News Staff Writer

Col. 1

Mrs. Pearl Beatty, a commissioner of the Newark Housing Authority, said yesterday an unknown man offered to pay her $10,000 to influence her vote for the appointment of an executive director of the authority.

Mrs. Beatty said also that at least two other commissioners had been harassed and threatened in efforts to control their votes.

The charges by Mrs. Beatty, who is also secretary of the city's Insurance Fund Commission, follow a statement by Mayor Kenneth A. Gibson that he "suspects that the attempt to force the

Col. 2

selection of an executive director is being manipulated by organized criminal elements in the Newark area."

The mayor's statement, like Mrs. Beatty's, contained no names, and both refused to elaborate. Mrs. Beatty said "a man walked into my office and offered me $10,000 if I would vote for 'their' choice for executive director."

She added, however, that she did not know the man, and probably would not recognize him if she saw him again. "But we've taken everything we have to (U. S. Attorney Herbert J.) Stern."

Stern declined to confirm or deny receiving any information or charges from Gibson or Mrs. Beatty.

Col. 3

The controversy, which has arisen since the former director, Joseph Sivolella, retired from office March 17, is threatening to blow into a full-fledged war between the mayor and his adversaries in city government.

Meanwhile, William Purcell, who the mayor said was under great pressure to vote for a specific candidate, issued a statement yesterday naming Gibson as the source of any pressure on him.

"It would seem to me," said Purcell, "that the mayor

Col. 3 con't.
Continued from p. 1

by his actions and statements to the press, is proving without a doubt, that the pressures that have been and still are being exerted, are coming from the office of the mayor and nowhere else."

Purcell said, "I was told that if I did not vote for the mayor's choice (for executive director) the funds of the Newark Housing Authority would be cut off and this would result in the laying off of many housing authority employees."

He added, "Shortly after my letting it be known that I was supporting Robert Notte for the executive director, I was beaten by four black assailants. This had both a mental and physical effect on me for quite a while. Notte is personnel director for the Authority.

"Threats were also made to me that if I did not go along with the mayor's choice for executive director, my term on the Housing Authority commission would not be extended and I would not be reappointed."

Purcell currently is a holdover. He was not reappointed after his five-year term ended last year. The City Council, however, has refused to confirm two appointees to the authority by Gibson. The Board is to meet at 2 p.m. today on the issue.

The attack Purcell described in his statement was alleged by Mrs. Beatty to have been pressure against Purcell to refrain from supporting Gibson's choice, if he had one.

Mrs. Beatty alleged also that Raymond F. Stabile, another commissioner whose term expired April 28, was "kidnaped" and held for several hours by unknown persons in an attempt to dissuade him from supporting

Gibson's choice. Stabile could not be contacted for comment.

Sources close to the authority, however, said it is "nearly certain" that Gibson has no clear choice, but rather insisted that the commission select its next executive director from a broad list of applicants. The authority currently has a list of at least 10 applicants, which Gibson

asserts in a letter to Secretary of Housing and Urban Development George Romney is being ignored.

Gibson said in his letter to Romney last Friday: "If an executive director is selected at the May 2, 1972, meeting I will have no further official relations with the Newark Housing Authority. My administration will not process any applications, urban renewal projects, cooperation agreements or any other normally expected actions related to the Newark Housing Authority."

He asked Romney to take the agency into receivership and run it from Washington. "Such immediate action," he told Romney, "would protect the rights of tenants in public housing in Newark and would also help keep federal money from being controlled by those who, in the past, have corrupted public officials and agencies in Newark and New Jersey."

Louis M. Turco, president of the City Council, reacted angrily to the mayor's statements. "Mayor Gibson," he said, "has again vented his displeasure in not getting his way, by a personal attack upon the character of other people. This has occurred whenever he has received a setback."

Turco cited Gibson's attack on the council on nationwide television last year in which he said the council was "corrupt" because it would not confirm his appointment to the Municipal Court. He recalled also the mayor's

"vague" charge that he was offered money for a specific appointment to the police directorship, and similar charges when the Council refused to adopt a $1.2 million—Model Cities planned variations program.

Appendix I

A source close to the council said it is considering legislation that would remove the urban renewal function of the housing authority from the mayor's influence, and place it under the council.

This, they claim, could conceivably remove some of the controversy which councilmen believe is impeding municipal progress in many areas.

Essex County Prosecutor Joseph P. Lordi said his office had been looking into previous charges of corruption of the housing authority, but that it had not completed the study.

APPENDIX J

Oral Opinion of Meanor, J.S.C. Rendered July 6, 1972

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

DOCKET NO.

IN THE MATTER OF PETER BRIDGE,
CHARGED WITH CONTEMPT OF COURT

. . . This is the return date of an order to show cause signed by Judge Giuliano, in which the prosecutor seeks to hold in contempt Mr. Peter Bridge, a reporter of the Newark Evening News, with regard to Mr. Bridge's refusal to answer certain identified questions before the Essex County Grand Jury on June 14, 1972.

It is not sought by the State to punish Mr. Bridge for refusing to answer. The State simply seeks the coercive arm of the Court to be placed upon Mr. Bridge to compel him to answer these questions. In effect, the State seeks an order confining Mr. Bridge to jail unless and until he answers the questions, or until the Grand Jury adjourns, whichever occurs first.

Now this case started out with a contention, I think, one, that at that time had a great deal of merit, that Mr. Bridge had, in addition to his New Jersey Statutory privilege, a privilege under the First Amendment of the Con-

stitution not to reveal the source of his information. Fortunately for me, we have the intervening decisions of *Branzburg v. Hayes,* and two companion cases decided by the United States Supreme Court, June 29, 1972, a five to four opinion, Mr. Justice White writing for the majority.

As brief as I can, this case holds that there is no First Amendment right on the part of a newspaper man to refuse to divulge information given to him confidentially or otherwise. The Court does indicate that there may be some basis for First Amendment relief to newspaper reporters in cases where he is harassed or he is made the subject of abuse through the use of the Grand Jury, but that circumstance is certainly not present here.

Now Mr. Bridge wrote an article which appeared in the May 2, 1972 edition of the Newark Evening News. The article apparently has different headlines under different editions, but the body of the article remains the same. I think I need only read into the record the first two paragraphs for the proceeding today.

The title is, "CITY HOUSING AIDE REPEATS BRIBE OFFER."

I doubt that Mr. Bridge wrote the headline. He may have, but certainly it shows the accuracy of the interpretation of the source of the information given by myself and by Judge Giuliano. The City housing aide who repeated the bribe offer can only be Mrs. Beatty, and there can be no doubt that this article quotes or claims to be quoting Mrs. Beatty. It goes on

"By Peter J. Bridge, Evening News Staff Writer.

"Mrs. Pearl Beatty, a commissioner of the Newark Housing Authority, said yesterday an unknown man offered to pay her $10,000 to influence her vote

for the appointment of an executive director of the authority.

Mrs. Beatty said also that at least two other commissioners had been harassed and threatened in efforts to control their votes."

Now after several proceedings before Judge Giuliano, Mr. Bridge was finally ordered to answer the following questions. I will go over them one by one. Before I do that though, I should repeat at this time my prior interpretation of the New Jersey Newspaperman's Privilege Statute, which is R. 27 of our Rules of Evidence, and is N.J.S. 2A:84A-21 in our statutes, and R. 37 of our Rules of Evidence which is entitled, "Waiver of Privilege by Contract or Previous Disclosure; Limitations." And is N.J.S. 2A:84A-29 of our statutes.

In my judgment, by identifying Mrs. Beatty as the source of the information about the bribe offer and about the harassment and threats to other commissioners, Mr. Bridge waived his newspaperman's privilege otherwise provided by the Statute, as to anything he obtained from Mrs. Beatty at anytime up to the publication of this article concerning or relevant to, i.e., the bribe offer to her of $10,000 and the harassing and threatening of other commissioners. Anything he obtained about those subject matters thereafter which has not been published, of course, there is no waiver. It makes no difference to me, in the construction of these two Statutes, whether he obtained the information about these two subject matters from Mrs. Beatty in one or 20 different interviews.

Now the first question is as follows, on page 7, line 7 of the transcript of the Grand Jury proceedings on June 14th.

Appendix J

This was a question Judge Giuliano ordered Mr. Bridge to answer:

> "Q. Mr. Bridge, would you please tell us whether Mrs. Beatty provided a description of the unknown man?"

In my opinion it's a proper question. It's a question relevant to an attempt on the part of the Grand Jury to determine one, whether the crime of offering the bribe was committed and two, who probably committed it, so an indictment could be returned, and this criminal, if he is in fact a criminal, be brought to trial; and I think the Court, Judge Giuliano was quite proper in ordering Mr. Bridge to answer it, and if the answer is yes to give the description and whatever else Mrs. Beatty said that would aid the Grand Jury in identifying this individual.

The other question in controversy is page 8, line 15:

> "Q. . . . Did Mrs. Beatty provide you with specific acts of harassment and threats other than those outlined in the newspaper article?"

Again, that's within the quotation of paragraph two of the article written by Mr. Bridge concerning harassing and threatening of others, and he certainly waived his privilege with regard to what she told him about that subject matter, and if the answer to that question is yes, then Mr. Bridge would have to go ahead and tell them what Mrs. Beatty told him about the acts of harassment and threats; again, as relevant to a Grand Jury proceeding, to determine one, whether a crime of threatening a public official in order to control his vote had been committed, and if so, who probably committed it.

Appendix J

Another question, page 8, line 23:

> "Q. Within the framework of this: "A man walked into my office and offered me $10,000 if I would vote for 'their' choice of executive director," did Mrs. Beatty indicate who their choice for executive director was?"

Judge Giuliano ordered him to answer that question in that form, although a paraphrase of that question appears a little different in the transcript before Judge Giuliano on June 14th, if she gave some information and the answer is yes, I think it would be quite proper for the prosecutor to go on to try to find out who the choice of the briber for the executive director was. It would be highly important for the Grand Jury to know, as far as the alleged conduct is concerned, and as to that, of course, he waived his privilege by quoting her in the paper, by saying she was offered a particular choice for executive director, although the choice was unnamed in the article.

Page 9, line 16:

> "Q. Mr. Bridge, in addition to that which is contained in the article, what else did Mrs. Beatty say? Did she say it was a tall man, a white man, a black man, a heavy man, a short man?"

An effort to try to find out a description of the individual who allegedly offered the bribe she has been quoted in the paper as saying an unknown man offered her; and I think the Grand Jury has a great deal of interest in finding out who this man was. A description of him might well be helpful in determining one, whether the crime, i.e., offering a bribe was committed, and if so, who committed it, so that person can be brought to trial.

Appendix J

Page 9, line 24:

"Q. Mr. Bridge, did Mrs. Beatty indicate when, in fact, the bribe offer took place?"

I think that's obviously relevant in determining what the Grand Jury must determine in order to fulfill its function. The timing of that bribe offer might be most important in an effort to ascertain the identity of the individual who made it, so it is my ruling, of course, in line with the construction of this Statute, that is given to it by Judge Giuliano, with which I agree, that Mr. Bridge waived his newspaperman's privilege as to any information obtained about these two subject matters, the bribery offer and the harassing and threatening, up to the time he wrote this article on May 2, 1972, no matter how many different occasions he interviewed Mrs. Beatty about these two subject matters.

By refusing to answer these questions pursuant to Judge Giuliano's rather explicit order on June 14th, 1972, he is in fact, in contempt of the Superior Court.

Now, as I said before, this case started out with the potentiality of a serious constitutional issue, which in the interim has been laid to rest.

The Grand Jury, I understand, Mr. Slavitt, is still in session, and you will return next Tuesday.

Mr. Slavitt: That is correct, your Honor.

The Court: Can you tell me now, Mr. Gilhooly, whether your client in light of all this is willing to answer these questions? Do you want some time to consult about it? Shall I defer anything further until after Tuesday, or—can't you?

Mr. Gilhooly: Your Honor, that may be a simple solution to the problem, as to whether or not one, an order staying any judgment of this Court would have to be entered, if the Court could reserve judgment until that time—

The Court: —well, I am not going to be here next week. If you know now whether you want to taken an appeal or whether your client will answer these questions, tell me. If you don't, say so.

Mr. Gilhooly: I am inclined to take an appeal, but I do not know specifically, what decision we will reach.

The Court: All right.

This will be the order of the Court, Mr. Slavitt.

I will order Mr. Bridge confined to the Essex County Jail until he answers the five questions that I have referred to which are contained in the Grand Jury transcript of June 14th, 1972, and all questions pertinent to his answers that emanate logically and relevantly to his answers to those questions.

If he refuses to answer the questions he will stay in the Essex County Jail until he either answers them or until this Grand Jury is adjourned and discharged.

I will stay the effect of this order of confinement until 2 P.M. tomorrow afternoon, Mr. Gilhooly.

This Grand Jury, as I understand it, is going to resume on Tuesday, is that correct, Mr. Slavitt?

Mr. Slavitt: Yes, sir.

The Court: All right. If you and your client appear here before 2 o'clock in the afternoon tomorrow, and your

client agrees to answer the questions Tuesday before the Grand Jury I will, of course, stay the effect of this order.

If you have filed a notice of appeal you can come before me by 2 o'clock tomorrow afternoon with a notice of appeal filed from this order.

I will stay the order of this Court concerning confinement until the appeal is decided. If however, Mr. Bridge does not file an appeal by 2 o'clock and he does not agree to answer the questions by 2 o'clock tomorrow afternoon, I want him here tomorrow afternoon by 2 o'clock to start his term of confinement, and I will release him in the meantime in his own recognizance.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-923

PETER BRIDGE,
Petitioner,

-vs-

STATE OF NEW JERSEY,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

JOSEPH P. LORDI
ESSEX COUNTY PROSECUTOR
ESSEX COUNTY COURTS BUILDING
NEWARK, NEW JERSEY 07102

R. BENJAMIN COHEN
ASSISTANT PROSECUTOR
Of Counsel

DONALD KESSLER
LEGAL ASSISTANT
On the Brief

STATEMENT OF THE CASE

Petitioner seeks a writ of certiorari to review a judgment entered in the Appellate Division of the Superior Court of New Jersey on September 12, 1972, affirming an order of the Superior Court, Law Division, holding petitioner in civil contempt for refusing to answer five questions before the Essex County Grand Jury and confining him to the County Jail until he answered the questions or until the Grand Jury was discharged. On September 26, 1972, the Supreme Court of New Jersey denied certification. On September 27, 1972, Mr. Justice Brennan denied an application for stay. This application was then referred to Mr. Justice Douglas who, in turn, referred it to this entire Court. On October 3, 1972, this Court denied the stay application. (Mr. Justice Douglas cast his vote for the stay.) Petitioner was released from jail on October 24, 1972, when the Grand Jury was discharged.

On May 2, 1972, petitioner, a newspaper reporter for the now defunct Newark Evening News, wrote an article in that paper in which he quoted Mrs. Pearl Beatty, a Commissioner of the Newark Housing Authority, as saying that, "A man walked into her office and offered her $10,000 to vote for "their choice for executive director.' " Mrs. Beatty was also reported to have said that at least two other Newark Housing Authority Commissioners had been harassed and threatened.

A grand jury investigation of this matter was commenced and petitioner received a subpoena requiring him to testify. On May 23, 1972, petitioner moved to quash the grand jury subpoena on the grounds that his First Amendment rights were violated and that he was protected by the newspaperman's privilege embodied in New Jersey statute N.J.S. 2A:84A-21. On May 31, 1972, the Honorable James Giuliano, J.S.C., denied petitioner's motion to quash the subpoena and on June 1, 1972, Judge Giuliano signed an order requiring petitioner to appear before the grand jury on June 6, 1972. On June 6, 1972, an interlocutory appeal was heard by the Appellate Division of the Superior Court of New Jersey, and the denial of the motion to quash the subpoena was affirmed.

Petitioner appeared before the grand jury on June 8, 1972. He admitted that Mrs. Beatty had made the statements to him which were quoted in the article. However, he refused to answer certain questions which were designed to explore the information he received from Mrs. Beatty, and which may have formed the basis

for indictments in this matter. Petitioner was brought before Judge Giuliano, and after a hearing, petitioner was directed by the court to answer the questions. Petitioner again appeared before the grand jury on June 14, 1972, and refused to answer the questions. Judge Giuliano again ordered the petitioner to answer the questions. When petitioner persisted in his refusal to answer the questions, Judge Giuliano ordered petitioner to show cause why he should not be held in contempt. A hearing on this order to show cause was held before the Honorable H. Curtis Meanor, on July 6, 1972. On July 7, 1972, Judge Meanor entered an order adjudging petitioner in contempt and directing that he be confined in the county jail until he answered the questions or until the grand jury was discharged.

REASONS FOR DENYING THE WRIT

I. THIS CASE IS MOOT SINCE THE PETITIONER WAS RELEASED FROM CIVIL CONFINEMENT ON OCTOBER 24, 1972.

When the grand jury was discharged, on October 24, 1972, the petitioner was released from civil confinement. At that time the grand jury investigation and all collateral matters, including the matter involving the petitioner, came to a close. The Court has constitutional jurisdiction over actual cases and controversies, between adverse interests, with respect to which the Courts' judgment will be effective. If the controversy becomes academic by reasons of changing circumstances, the court's jurisdiction ceases. A controversy may end if the legal action which is the subject of the prohibition is withdrawn (**William v. Simons**, 35 U.S. 49 (1957). Therefore, this case is moot.

In addition it should be noted that the facts of this case make it a particularly inappropriate vehicle for raising the questions petitioner would have this Court consider. First of all, petitioner has never claimed and does not now claim that the source of his information was confidential. In fact, he revealed the source of his information (Pearl Beatty) in the very newspaper article which caused the grand jury to subpoena him. Second, petitioner has never claimed and does not now claim that the information given to him by this source was given confidentially. In fact he has stated to the contrary. So in attempting to assert what he would like to be an absolute privilege, petitioner cannot claim to be protecting either a

confidential source of information, or information given to him confidentially.

Moreover, since the conclusion of this case the New Jersey Legislature has passed a bill granting a much broader protection to newsmen than N.J.S. 2A:84A-21. This bill is presently awaiting the signature of the Governor. A controversy may end if the statute which is the basis of the action complained of is repealed or modified. **Bryan v. Austin**, 354 U.S. 933 (1957); **Berry v. Davis**, 242 U.S. 468 (1917).

II. CASE AUTHORITY CLEARLY DICTATES THAT PETITIONER SHOULD BE COMPELLED TO TESTIFY BEFORE THE GRAND JURY.

Petitioner contends that effective news reporting requires that newsmen be able to keep informant's statements confidential. Therefore, petitioner argues that the State of New Jersey must show a "minimum of compelling need, relevancy and materiality" before a reporter is required to testify about such statements. Petitioner employs the following reasoning in arriving at the conclusion that the above test should be applied: Petitioner points out that in the instant case the grand jury can submit a report or presentment rather than an indictment. A report is generally made by a grand jury when it cannot find enough evidence to support an indictment; but the surrounding circumstances warrant criticism. Reports are confined to commenting upon the action of public officials and public agencies. **In re Presentment by Camden County Grand Jury**, 34 N.J.378, 169 A. 2d 465 (1971). Petitioner argues that in cases such as the one at bar where public agencies are involved, it is impossible to know whether the grand jury will issue a report or an indictment. Therefore, defendant concludes that application of the above test is warranted.

It is the position of the State of New Jersey that relevant case authority dictates that no special test for determining when newsmen are required to testify be provided. Further, The State of New Jersey contends that the fact that the grand jury may submit a report rather than an indictment is not relevant in determining this question.

Clearly, this Court's decision in **Branzburg v. Hayes**, 408 U.S. 665 (1972), support the position of the State of New Jersey. Justice

White in the opinion of the Court turned aside suggestions that reporters are, unlike other citizens, somehow entitled to a preliminary inquiry into the scope of a grand jury inquiry and the validity of its subpoena, **Branzburg v. Hayes, supra,** 408 U.S. at pp. 701-707. Rather, the opinion of the Court in **Branzburg** clearly indicated that only when investigations are conducted in other than good faith can a newsman refuse to testify. **Branzburg v. Hayes, supra,** at 707.

The fact that a grand jury may submit a report rather than an indictment is of no consequence. The grand jury plays an important function in determining whether a crime has been committed. In conducting such investigations, the testimony of informed witnesses is crucial. "A grand jury investigation is not fully carried out until every available clue has been run down and all witnesses examined in every proper way to find if a crime has been committed."

Branzburg v. Hayes, supra, 408 U.S. at 702. **State v. Stone,** 429 F. 2d, 130, 140 (CA 2, 1970). Only after the grand jury has examined all available evidence can the grand jurors make a determination as to whether indictments will be returned. Under the current scheme articulated by this Court, a grand jury can hear the testimony of a news reporter and decide that an indictment is not appropriate. Certainly, the fact that the grand jury may decide to return a report rather than indictments should not be determinative of whether a reporter should be required to testify.

CONCLUSION

For the reasons stated herein, this Court is respectfully urged to deny the petition for a writ of certiorari.

Respectfully submitted,
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